

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

FRANK J. WHYTE

:

Plaintiff

:

v

:

Civil Action No. RDB-06-3184

WARDEN

:

Defendant

:

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MEMORANDUM OPINION

The above-captioned Petition for Writ of Habeas Corpus was filed on November 27, 2006. Petitioner asserts that he is currently in the process of challenging his state criminal conviction, but that his due process rights are being denied because the court has ruled against him on several matters. Paper No. 1. With respect to the ongoing state litigation, Petitioner seeks to have this Court “intervene as needed to ensure [his] due process rights are restored.” *Id.*

To the extent that the instant Petition is a challenge to the validity of Petitioner’s criminal conviction, it has been filed prematurely. When filing a federal habeas corpus application under 28 U.S.C. § 2254, a petitioner must show that all of his claims have been presented to the state courts. *See* 28 U.S.C. §2254(b) and (c); *see also Preiser v. Rodriguez*, 411 U.S. 475, 491 (1973). This exhaustion requirement is satisfied by seeking review of the claim in the highest state court with jurisdiction to consider it. For a person convicted of a criminal offense in Maryland, this may be accomplished either on direct appeal or in post-conviction proceedings. In light of the date provided by petitioner regarding the subject criminal charges, it is clear that his claims have not been exhausted.

To the extent that Petitioner seeks mandamus relief with respect to actions taken by the

state courts, that relief is unavailable. This Court has no jurisdiction to issue a writ of mandamus commanding a state court to entertain or otherwise rule on a motion. *See Gurley v. Superior Court of Mecklenburg County*, 411 F.2d 586, 587 (4th Cir. 1969); *see also* 28 U.S.C. § 1361. A writ of mandamus is an extraordinary writ that is only available in cases where no other means by which the relief sought could be granted. *See In re Beard*, 811 F.2d 818, 826 (4th Cir.1987). The available remedy with respect to Petitioner's disagreement with orders issued by the state courts is an appeal.

Accordingly, by separate Order which follows, the Petition for Writ of Habeas Corpus will be dismissed without prejudice.

December 7, 2006
Date

/s/
RICHARD D. BENNETT
UNITED STATES DISTRICT JUDGE